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Letter dated 13 February 2017 from the Secretary-General addressed to the President of the Security Council

I have the honour to convey herewith the fifth report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism.

I should be grateful if the present letter and the report could be brought to the attention of the members of the Security Council.

(*Signed*) António **Guterres**

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Letter dated 13 February 2017 from the Head of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism addressed to the Secretary-General

The Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism has the honour to transmit its fifth report pursuant to Security Council resolutions 2235 (2015) and 2319 (2016).

(*Signed*) Virginia **Gamba**
Head
Organization for the Prohibition of Chemical Weapons-
United Nations Joint Investigative Mechanism

Fifth report of the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism

I. Introduction

1. The present report is the fifth report of the Organization for the Prohibition of Chemical Weapons (OPCW)-United Nations Joint Investigative Mechanism, submitted pursuant to Security Council resolution 2319 (2016). It covers the period from 20 October 2016, when the Mechanism's fourth report (S/2016/888) was submitted to the Council, to 10 February 2017.

II. Background

2. The Mechanism was established by the Security Council in its resolution 2235 (2015) with a mandate to identify to the greatest extent feasible individuals, entities, groups or Governments who were perpetrators, organizers, sponsors or otherwise involved in the use of chemicals as weapons, including chlorine or any other toxic chemical, in the Syrian Arab Republic where the OPCW fact-finding mission determined or had determined that a specific incident in the Syrian Arab Republic had involved or had likely involved the use of chemicals as weapons.

3. During 2016, the Mechanism implemented its mandate in two phases. The first, pertaining to information collection and planning for case development, consisted of reviewing and analysing the mission's data, mapping the incidents and developing investigation plans and methodology. At the end of the first phase, the Mechanism had identified nine cases in the Syrian Arab Republic to be investigated (see S/2016/738/Rev.1). The second phase (case investigation) consisted of in-depth analysis of the cases identified and continued until sufficient information had been gathered, analysed, assessed and corroborated to allow the Mechanism to present its findings to the Security Council.

4. In the Mechanism's third and fourth reports, the Leadership Panel reported that it had reached a conclusion as to the actors involved in the following four cases: Talmenes (21 April 2014), Sarmin (16 March 2015), Qmenas (16 March 2015) and Marea (21 August 2015). In relation to the first three incidents, the Panel had determined that the Syrian Arab Armed Forces had been involved in the use of toxic chemicals as weapons and that their helicopters had been used to drop barrel bombs in those three cases. It had also identified the Hama and Humaymim airbases, both controlled by the Government, as the airbases from which the helicopter flights had originated. In relation to the incident in Marea, the Panel had determined that Islamic State in Iraq and the Levant (ISIL) had conducted an attack in Marea, using several artillery shells filled with sulfur mustard, a chemical weapon.

5. In paragraph 1 of resolution 2319 (2016), by which the Mechanism's mandate was renewed, the Security Council reaffirmed the mandate contained in resolution 2235 (2015). It was also reaffirmed that the Mechanism would continue to base its work on the letters dated 27 August and 9 September 2015 from the Secretary-

General addressed to the President of the Security Council (S/2015/669 and S/2015/696). The structure, terms of reference and procedures, including with regard to the Mechanism's methods of work, information management, modalities for access, evidence and reporting, therefore remain unchanged.

6. Furthermore, in paragraphs 4 and 9 of resolution 2319 (2016), the Mechanism was encouraged to consult appropriate United Nations counter-terrorism and non-proliferation bodies, in particular the Security Council Committee established pursuant to resolution 1540 (2004) and the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities. This was in order to exchange information on non-State actor perpetration, organization, sponsorship or other involvement in the use of chemicals as weapons for those incidents falling within the Mechanism's mandate and, as appropriate, to brief those bodies on relevant results of the Mechanism's work.

7. The Mechanism was also invited, in paragraph 5 of resolution 2319 (2016), to engage with relevant regional States in pursuit of its mandate, including in order to identify to the greatest extent feasible any individuals, entities or groups associated with ISIL or the Nusrah Front (now calling itself Jabhat Fath al-Sham), on the incidents falling within the Mechanism's mandate. Furthermore, regional States were encouraged to provide to the Mechanism, as appropriate, information on non-State actors' access to chemical weapons and their components or efforts by non-State actors to develop, acquire, manufacture, possess, transport, transfer or use chemical weapons and their means of delivery that occurred under their jurisdiction.

8. In addition, the Mechanism was invited, in paragraph 6 of resolution 2319 (2016), to offer its assistance to OPCW in situations where a State party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction requested assistance and protection against the use or threat of use of chemical weapons.

III. Activities

9. In its fourth report, the Mechanism reported that it had closed its investigations office in The Hague, Netherlands, and its liaison office in Damascus on 23 September 2016 because the technical roll-over authorized by the Security Council through the exchange of letters (S/2016/806 and S/2016/807) was solely for the completion and submission of its fourth report. After the submission of that report, a second technical roll-over was authorized to allow for consultations on the possible renewal of the mandate.

10. During the period of this second technical roll-over, the New York office remained minimally staffed. After the adoption of resolution 2319 (2016), efforts were focused on budgetary issues and on refitting the investigative office in The Hague, including providing equipment necessary for secure information management and staffing.

11. In this regard, the Mechanism had previously reported that alternative information collection efforts and investigative skills would be required to

investigate the various layers of perpetration, in addition to the sponsors, organizers and those otherwise involved. To this end, efforts have been and will continue to be made to strengthen the investigative office in The Hague through the establishment of two dedicated investigative units that are complementary: the information collection unit and the analysis and corroboration unit. The capacity of the investigative office has been reinforced by hiring personnel with extensive experience in complex investigations and with specialized knowledge, such as forensics, counter-terrorism and military analysts. Special consideration was given to retaining the institutional knowledge of the office.

12. Assistance similar to the previous technical support obtained, such as for translation, may also be needed. The Mechanism continues to have a trust fund, which will be used for all material and technical needs in the implementation of its mandate. Existing donors have been requested to extend the time frame of their contributions to reflect the timeline of resolution 2319 (2016), and a fundraising effort has begun. An additional financial contribution was received from one Member State.

Interaction with Member States and the Organization for the Prohibition of Chemical Weapons

13. The New York office continued to interact with Member States on its mandate, including through the provision of status updates. Furthermore, the Mechanism received nine allegations from Member States on non-State actors' transfer or possession of, or use or intent to use, chemical weapons or toxic chemicals. One allegation concerned the use of chlorine in Aleppo in December 2016 by an armed opposition group. Eight allegations concerned the possession of and intent to use chemical weapons, including missiles fitted with chemical warheads. One was related to the transfer of chemicals to armed opposition groups with the intent to use them as chemical weapons. Three of these allegations specifically referred to ISIL receiving and possessing toxic chemicals with an intention to use them as a weapon. These allegations were shared with the OPCW technical secretariat.

14. In view of the above, the New York office continued to maintain regular contact with the OPCW technical secretariat.

15. Furthermore, as stated in the fourth report of the Mechanism, on 10 October 2016, a communication was received from the Syrian Arab Republic that contained a reference to an internal investigation being carried out by the Syrian national committee. According to the communication, the committee had conducted a thorough study (technical and legal) and had reviewed the flight plans and air operations in some areas under investigation by the Mechanism, specifically referring to the Hama and Humaymim airbases. As previously reported, the Leadership Panel had formally requested the Government to provide the names of the specific Syrian Arab Armed Forces units and any entity outside the Armed Forces from whom the national committee had received the flight plans and information relating to air operations. A reply to that request had not yet been received at the time of writing. Such information is of great importance, given that commanders are responsible for any assets under their control. Investigators will also have the capacity to review and analyse any information provided.

Consultations with United Nations counter-terrorism and non-proliferation bodies

16. Pursuant to resolution 2319 (2016), the New York office has established contact and held preliminary discussions with the Chairs of the Security Council Committee established pursuant to resolution 1540 (2004), the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism and the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and associated individuals, groups, undertakings and entities for the exchange of information envisaged in paragraph 4 of the resolution.

IV. Way forward and concluding remarks

17. The starting point of the Mechanism's investigation will be those cases in which the fact-finding mission has determined that an incident in the Syrian Arab Republic involved or likely involved the use of chemicals as weapons. The mission's latest report (S/2017/45) concluded that the mission could not confidently determine whether or not a specific chemical had been used as a weapon in the investigated incident. Accordingly, no further action can be taken by the Mechanism in relation to that incident. Nevertheless, there is another mission under way and the Mechanism will be ready to investigate such cases in which the mission determines the use or likely use of chemicals as weapons.

18. The Mechanism's set-up ensures that it has the capacity and skills necessary to carry out concurrent investigations on multiple sets of issues. While awaiting further determinations by the fact-finding mission, the Mechanism will be working on making the investigative office in The Hague operational and ready to conduct investigations by March 2017. In relation to those four cases in which the Leadership Panel had reached a conclusion on the actors involved, as indicated in the third and fourth reports, the investigative office will also be prepared to conduct an investigation to identify, to the greatest extent feasible, additional actors, such as perpetrators, organizers and sponsors. This capacity will also be reinforced through the exchange of information with United Nations counter-terrorism and non-proliferation bodies that may provide further leads with respect to non-State actors, more specifically ISIL and the Nusrah Front (Jabhat Fath al-Sham).

19. Lastly, the Mechanism expresses its appreciation to the United Nations Secretariat, in particular the Department of Management and the Office for Disarmament Affairs, and to the OPCW technical secretariat for the administrative and operational support received.